

1927⁴⁸⁸ was held to comprise a transfer of the undertaking, or part of the undertaking, of an existing company to a new company with substantially the same persons as members as were members of the existing company, and the scheme had to involve the carrying on by the new company of substantially the same business as the business transferred to it.⁴⁸⁹

The requirements of a 'reconstruction' for the purpose of section 55 FA 1927 were also considered in *Baytrust Holdings Ltd v. IRC*⁴⁹⁰ where it was held that the scheme in question was not a scheme of 'reconstruction'. The reconstruction of a company normally involved the transfer of a company's undertaking (or part of it) to a new company which was going to carry on substantially the same business as that transferred to it⁴⁹¹ but the transfer of assets which did not form a part of the business did not qualify for the exemption.

3.5.2. The three conditions for SDLT reconstruction relief⁴⁹² (Paragraph 7 Schedule 7)

The first condition for reconstruction relief is that the consideration for the acquisition consists wholly or partly of the issue of non-redeemable shares in the acquiring company to all the shareholders of the target company. Where the consideration for the acquisition consists partly of the issue of non-redeemable shares, the first condition is met only if the rest of the consideration consists wholly of the assumption or discharge by the acquiring company of liabilities of the target company.

The second condition is that after the acquisition has been made, each shareholder of each of the companies is a shareholder of the other and the proportion of shares of one of the companies held by any shareholder is the same, or as nearly as may be the same, as the proportion of shares of the other company held by that shareholder:

⁴⁸⁸ Section 55 FA 1927 was repealed by section 74 FA 1986 and replaced by the stamp duty exemptions and reliefs set out in sections 75 to 77 FA 1986.

⁴⁸⁹ See *Brooklands Selangor Holdings Ltd v. IRC* [1970] 2 All ER 76 and *Baytrust Holdings Ltd v. IRC* [1971] 3 All ER 76

⁴⁹⁰ [1971] 3 All ER 76

⁴⁹¹ Dicta of Chitty J. in *Hooper v. Western Counties and South Wales Telephone Co Ltd* (1892) 68 LT 78 at 80, of Buckley J. in *Re South African Supply and Cold Storage Co* [1904] 2 Ch 268 at 286, Lord Hanworth MR in *Oswald Tillotson Ltd v. IRC* [1933] 1 KB 134 at 155, and Pennycuik J. in *Brooklands Selangor Holdings Ltd v. IRC* [1970] 2 All ER 76 at 87 applied.

⁴⁹² Note: there is no third condition for stamp duty reconstruction relief (under section 75 FA 1986)

THE SDLT REGIME IN DETAIL

“The only time the proportions do not have to match exactly is when there are insufficient shares of one company to allow the shareholders to match their proportions of shares in the other company. In this case, any reasonable disposition of the shares to allow matching as nearly as possible is acceptable (but so that control of one company is the same as control of the other company).”⁴⁹³

This second condition means that the relief is only available where both companies have share capital.

From Royal Assent to FA 2007⁴⁹⁴, the rules governing SDLT reconstruction relief have been changed, so that a company that has purchased its own shares is no longer be regarded as a shareholder in determining whether the conditions for relief have been met⁴⁹⁵. In practice this means it will no longer be necessary for such a company to cancel its own shares or accept shares in the acquiring company in order to qualify for the relief. This change arises from the fact that quoted companies can hold their own shares in treasury without the need to cancel them.

The third condition is that the acquisition is effected for bona fide commercial reasons and does not form part of a scheme or arrangement of which the main purpose, or one of the main purposes, is the avoidance of liability to stamp duty, income tax, corporation tax, capital gains tax or SDLT.

A unit trust is not treated as a company for this purpose (section 101(7)).

3.5.3. Claiming reconstruction relief

Relief is claimed by completing the land transaction return (form SDLT1), checking Box 9 to show that a relief is being claimed and inserting code 13.

3.5.4. Clawback of reconstruction and acquisition relief

Paragraph 9 Schedule 7 provides that where a transaction is exempt by virtue of reconstruction relief (or is subject to a reduced rate of tax by virtue of acquisition relief) and:

- (1) control of the acquiring company changes before the end of the period of three years beginning with the effective date of the transaction or in pursuance of, or in connection with, arrangements made before the end of that period; and

⁴⁹³ SDLTM23210

⁴⁹⁴ 19 July 2007

⁴⁹⁵ By section 74(1) and (4) FA 2007 which inserted a new section 75(5A) in FA 1986.